

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUN 8 2007

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

JAMES LETERSKI,

Plaintiff,

vs.

KINGFISHER COUNTY JAIL et al.,

Defendants.

No. CIV-06-451-W

ORDER

On March 6, 2007, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss filed by defendants Kingfisher County Jail ("Jail") and Eldon Dickson be granted in part and denied in part. Upon de novo review, the Court agreed that dismissal of the Jail was required since it is not a legal entity capable of being sued, but that dismissal of Dickson was not warranted due to the failure of plaintiff James Leterski to exhaust available administrative remedies. Accordingly, the Court adopted the Report and Recommendation and re-referred the case to Magistrate Judge Argo for further proceedings.

The matter now comes before the Court on Magistrate Judge Argo's Report and Recommendation issued on May 17, 2007, wherein he has recommended that the complaint in this matter be dismissed. Leterski was advised of his right to object, but no objections have been filed within the allotted time.

The record reflects that the Clerk of the Court mailed Magistrate Judge Argo's Orders [Docs. 28, 29] issued on April 11, 2007, to Leterski's last known address, see Rule 5.5(a), Rules of the United States District Court for the Western District of Oklahoma,

(papers sent to last known address deemed delivered), and that these documents were returned to Clerk by the United States Postal Service with the following notations on the envelopes: "Not Deliverable as Addressed, Unable to Forward" and "Return to Sender." These returned documents prompted Magistrate Judge Argo to remind Leterski that it was Leterski's responsibility to provide the Court with a mailing address and to file with the Clerk notice of any change of address. See Rule 5.5(a), supra. Magistrate Judge Argo also ordered Leterski to file a change of address on the form provided by the Clerk and advised him that his failure to do so by May 4, 2007, could result in dismissal of his lawsuit.²

Leterski has not complied with Magistrate Judge Argo's directives or the applicable procedural rules, and his inaction has prevented the expeditious resolution of this matter on its merits. Accordingly, the Court concurs that dismissal without prejudice is warranted due to Leterski's failure to prosecute this matter, and hereby

- (1) ADOPTS the Report and Recommendation issued on May 17, 2007; and
- (2) DISMISSES Leterski's complaint without prejudice to refiling.

ENTERED this 8th day of June, 2007.


LEE R. WEST
UNITED STATES DISTRICT JUDGE

¹The Court's Order of April 3, 2007, was also returned to the Clerk by the United States Postal Service on April 24, 2007.

²The Report and Recommendation was returned to the Clerk with the notations on the envelope: "Not Here" and "Return to Sender."